Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Notice of Inquiry Concerning a Review of	)	CC Docket No. 02-39
the Equal Access and Nondiscrimination	)	
Obligations Applicable to Local	)	
Exchange Carriers.	)	

COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL ON UPDATING THE RECORD IN THE N0TICE OF INQUIRY IN THIS DOCKET

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On the Comments:
Christopher J. White, Esq.
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Dated: May 29, 2007

I. INTRODUCTION

On March 7, 2007, the Federal Communications Commission ("FCC") issued a Public Notice inviting interested parties to update the record pertaining to issues raised in the FCC's equal access and nondiscrimination proceeding initiated in 2002 as a Notice of Inquiry (CC Docket No. 02-39).[1] Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities.[2] Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to Rate Counsel's continued participation and interest in implementation of the Telecommunications Act of 1996. The New Jersey Legislature has declared that it is the policy of the State to provide diversity in the supply of telecommunications services, and it has found that competition will "promote efficiency,

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[1]/ See Public Notice issued March 7, 2007, DA 07-1071.

[2]/ Effective July 1, 2006, the New Jersey Division of the Ratepayer Advocate is now Rate Counsel. The office of Rate Counsel is a Division within the New Jersey Department of the Public Advocate. The Department of the Public Advocate is a government agency that gives a voice to New Jersey citizens who often lack adequate representation in our political system. The Department of the Public Advocate was originally established in 1974, but it was abolished by the New Jersey State Legislature and New Jersey Governor Whitman in 1994. The Division of the Ratepayer Advocate was established in 1994 through enactment of Governor Whitman's Reorganization Plan. See New Jersey Reorganization Plan 001-1994, codified at N.J.S.A. 13:1D-1, et seq. The mission of the Ratepayer Advocate was to make sure that all classes of utility consumers receive safe, adequate and proper utility service at affordable rates that were just and nondiscriminatory. In addition, the Ratepayer Advocate worked to insure that all consumers were knowledgeable about the choices they had in the emerging age of utility competition. The Department of the Public Advocate was reconstituted as a principal executive department of the State on January 17, 2006, pursuant to the Public Advocate Restoration Act of 2005, P.L. 2005, c. 155 (N.J.S.A. §§ 52:27EE-1 et seq.). The Department is authorized by statute to "represent the public interest in such administrative and court proceedings . . . as the Public Advocate deems shall best serve the public interest," N.J.S.A. 52: 27EE-57, i.e., an "interest or right arising from the Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens." N.J.S.A.52:27EE-12; The Division of Rate Counsel, formerly known as the Ratepayer Advocate, became a division therein to continue its mission of protecting New Jersey ratepayers in utility matters. The Division of Rate Counsel represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates in Federal and state administrative and judicial proceedings.

reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." The resolution of the complex economic and policy issues that this proceeding embraces directly affects the structure of telecommunications markets, and the prices that consumers pay for basic telecommunications service.

Rate Counsel submits that there still exists a fundamental need for the equal access and nondiscrimination requirements and such requirements remain as necessary today as they were when these obligations were adopted. The acquisition of the two largest long distance service providers ("IXCs"), AT&T Corp. and MCI, Inc. by the two largest Bell Operating Companies ("BOCs") coupled with the consolidations of BOCs are compelling reasons alone to continue with the current regime. There are significant numbers of local exchange customers who do not want or need to purchase bundles of services. Consumers who make few toll and long distance calls still require the ability to select the toll and long distance carriers that offer them the best value. That may not be the case, if they loose the option of selecting the carrier of their choice for toll and long distance. Verizon Inc. has just announced that residential customers will be charged a $2.00 monthly fee in order to retain the ability to make long distance calls. Essentially, the customers who make no long distance calls or very few calls that add up to less than $2.00 will now be assessed this new charge each month. The customer may avoid the charge by signing up to a bundled plan with a minimum monthly charge or by choosing a presubscribed interexchange ("PIC") carrier designation of PIC None or by changing their long distance carrieer to another company. To change carrier, a PIC change charge of $5.00 will apply. Consumers must have the right to obtain long distance services without a minimum monthly charge in the event no calls or infrequent long distance calls are made. The old AT&T has stated its intent to harvest its mass market customers that they serve through unbundled network elements. As part of the new AT&T, AT&T is imposing a $2.99 charge on its long distance business customers who do not subscribe to local service for AT&T. This is a direct attack on the spirit and intent of equal access and the public policy of nondiscrimination. These recent events are reminiscent of the attempt by the old AT&T to impose low volume fees on its long distance customers which the FCC forced AT&T to withdraw. As discussed more fully below, the equal access and nondiscrimination requirements are necessary to protect consumers, preserve consumer options, and to promote and foster competitive markets. Such protections need to be expanded to obligate competitive local exchange carriers, wireless carriers, and cable providers of voice to comply with such requirements and offer consumers a choice of toll and long distance providers. The FCC should proceed with a rulemaking to expand these requirements to all providers.

II. DISCUSSION OF THE ISSUES

Rate Counsel supports the positions taken by the National Association of State Utility Consumer Advocates ("NASUCA") and the Texas Public Utility Commission ("PUCT"). The equal access and nondiscrimination requirements should be retained. This recommendation is more appropriate now than it was in 2002. The equal access and nondiscrimination requirements are necessary to preclude the exercise of market power that now exists from the purchase of the two largest IXCs and the success of the RBOCs in gaining market share in the long distance market. With out such requirements, the RBOCs could exercise its dominant status that they now hold in most markets.

More importantly, Rate Counsel supports expanding equal access and nondiscrimination requirements to competitive local exchange carriers ("CLECs"). Few, if any CLECs permit a customer to purchase only local service. Without such option, the customer has no choice to select its toll and long distance carrier of its choice. Most CLECs require the customer to purchase bundles that require the customer to purchase toll and long distance from the CLEC. These plans are not suitable for consumers who make few or no toll and long distance calls. As discussed above, consumers are now being penalized for not making long distance calls by or a being charged more because they have decided to have a different carrier for local service than they have for long distance. This does not reflect a choice for consumers but is indicative of a market failure.

Rate Counsel notes the internal inconsistencies inherent in the calls for elimination of the equal access and nondiscrimination requirements. On one hand, the RBOCs and others argue that the market are competitive, but in face of so called competitive markets, some of these same carriers have sought regulatory relief for under recovery of local number portability costs to the tune of over $300 million and have sought recovery of $35-45 million of end users common line charges, i.e., to cover refunds paid to payphone operators by increasing end user charges to consumers. At the same time, these same carriers have supported the Missoula Plan that calls for substantial increases in the subscriber line charge as necessary to promote competition. Rate Counsel asks why are not local service rates going towards marginal costs? In a truly competitive market where full and open competition existed, rates would be heading toward marginal costs.

III. CONCLUSION

The FCC should reject the calls to eliminate equal access and nondiscrimination requirements and otherwise expand them to all providers of voice in order to protect consumers and their right to choose the services they want to purchase. The FCC should initiate a rulemaking to expands to requirements to all providers of voice.

Respectfully submitted,

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ATTACHMENTS

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March 23, 2007

VIA OVERNIGHT DELIVERY
Ms. Kristi Izzo
Secretary
State of New Jersey
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

RECEIVED
MAR 26 2007
DIVISION OF
RATE COUNSEL

Dear Secretary Izzo:

Enclosed for filing are an original and three copies of a tariff page revising AT&T Communications of NJ, L.P. ("AT&T") Tariff B.R.C.-N.J.-No. 1.

This filing introduces the In-State Connection Fee (ISCF) for AT&T business long distance customers. This charge does not apply to business customers who subscribe to AT&T only for local telephone service.

Notice to customers is being provided by direct mail that was sent on March 23, 2007 in accordance with N.J.A.C. 14:10-5.4(b). A copy of the notification is included as Attachment 1.

The enclosed tariff pages have an effective date April 2, 2007 seven (7) days from the date of this filing.

Acknowledgement and date of receipt of this filing are requested. A postage-paid, pre-addressed envelope is enclosed for this purpose.

Sincerely,

Enclosures

cc: Seema M. Singh, Esq., Division of the Ratepayer Advocate

Attachment 1

Dear **New Jersey** Customer,

Your local telephone company in **New Jersey** charges AT&T to carry your in state long distance and local toll calls over its lines. In order to help recover these costs, AT&T will include in your monthly bill a **$2.99** In State Connection Fee, beginning April 2, 2007. The fee applies to customers subscribed to AT&T for business long distance or local toll service. The fee does not apply to customers that subscribe only to AT&T Local Service. For more information about this fee, please call us at 800-222-0400 or visit us at http://serviceguide.att.com/servicelibrary/business/ext/state_tariff_buss.cfm

This fee is assessed on your main billing account number, not per telephone number. If you have more than one main account, this fee will be applied to each main account number.

We look forward to continuing to provide you with the quality service you expect from us.

Thank you,

AT&T Small Business Services

2. GENERAL REGULATIONS

2.5. PAYMENTS AND CHARGES (Cont'd)

2.5.6. INSTATE CONNECTION FEE (N)

An Instate Connection Fee of $2.99 will be assessed to customers who subscribe to the following services: AT&T Commercial Long Distance, AT&T All In One, AT&T CustomNet, AT&T Small Business Option, Distributed Network, AT&T PRO WATS/Plan Q and AT&T Clear Advantage. This fee will be charged to all customers who incur at least $0.01 of long distance usage or long distance charges on their monthly bill. Billed charges can be in the form of billed usage or a billed monthly fee. This fee does not apply to customers that subscribe to only AT&T Local Services. (N)

2.6. USE OF ANOTHER MEANS OF COMMUNICATIONS

2.6.1. General

If the customer elects to use another means of communication during a period of interruption, the customer must pay the charges for the alternative service used.

The Record

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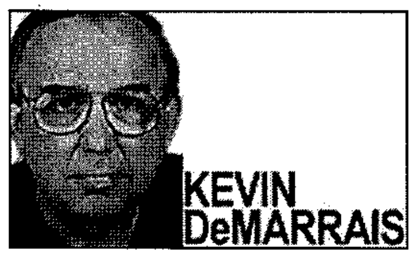
Another Verizon fine-print surprise

Sunday, May 20, 2007

By KEVIN DEMARRAIS
RECORD COLUMNIST



Utility bills have long been filled with universal service fees, securitization transition charges and other mysterious costs, so it's quite possible you missed the latest.

It's a maximum of only $2 a month, and it's assessed on some Verizon customers who DON'T make any calls. That's right, you'll get hit for up to $2 if you don't spend at least that much on long-distance calls.

The fee, which kicked in last month, is in addition to a $2 price increase that also took effect in April. It applies to customers who have Verizon as their long-distance carrier but have not chosen a bundled calling plan.

The minimum charge does not apply to customers who use Verizon for local service but use another carrier for long-distance. Also, customers who spend more than $2 a month on out-of-state calls won't have to pay more.

"I couldn't believe it," said Irving Gerber, a sharp-eyed reader from Fair Lawn. "I usually don't read the fine print. I was shocked and surprised."

It's not the amount, but the principle, he said. "I don't like people taking advantage of me."

Monthly minimums are not new; in 1999, AT&T began charging $3 a month. Now Verizon is doing the same, seeking to "offset the cost of running our business," spokesman Rich Young said. The minimum fee "affects a very small percentage of our customers."

Young compared the fee to having to pay a cable company each month even if you watch no shows. "The reality is, there are costs associated with running the network."

What many subscribers may not know is that you don't need to have an assigned carrier to make long-distance calls. So if you make few long-distance calls and want to avoid the new fee, you can hang up on Verizon.

All it takes is a call to customer service, and if you do so this month, the company will waive its normal disconnect fee, which could be $5 or more, Young said.

But don't act until you've looked at all your options.

For starters, without an assigned carrier, you can't make a direct-dial long-distance call, which is a concern for Gerber, who uses one of his lines for faxing.

"I don't want to lose the flexibility," he said.

But you can use a calling card (available at many convenience stores and the post office) or by using "dial around" or a 10-10 number (a good source of information is 10-10phonerates.com) to make that occasional long-distance call.

Either alternative involves entering a lengthy access number before you can dial your call, and you have to be careful to avoid expiration dates (with the calling cards) or hidden fees and minimums (with dial-around).

For example, the heavily advertised PennyTalk -- a service from Newark-based IDT Corp. -- charges just 1 cent a minute within the United States and 2 cents for many sites around the world. But read the small print and you'll discover that PennyTalk carries a 49-cent connection fee and a 99-cent monthly service charge.

That means a single one-minute call in a month would cost $1.49, with all but 1 cent from add-on charges.

Make just three calls in a month and you could end up spending more than you did with Verizon.

Another alternative is switching to a smaller long-distance carrier.

For five years I've used KISS long-distance, which charges a $3 monthly fee, plus 3 cents a minute (broken into 6-second intervals) for all toll calls, in or out of state. Best of all, if you get one other person to sign up, the company will waive the monthly fee forever. Check it out at kissld.com, or call toll-free (800) 805-1000.

For a look at some others, try calling-plans.com.

Let's face it; the traditional telephone companies have little interest in selling long-distance service, except as part of package deals with Internet and cable television services or as part of cellphone plans.

Only non-traditional providers, such as cable and Internet companies, seem to be promoting it, and they, too, are pushing package deals.

As Young said, the trend is toward one provider for all three.

Depending on your calling habits, however, the convenience of one provider may be more expensive than purchasing these services separately.

That could be especially true if you make most of your toll calls on a cellphone, as is happening with increasing frequency.

A federal survey released last week shows that 12 percent of American adults, including more than a quarter of young adults -- defined as between 18 and 29 -- have cellphones only. By comparison, only 2 percent of those over 65 rely solely on their cells.

If you've gone the cell-only route, you don't have to worry about long-distance rates, calling cards or dial-around. Those of us with cell and land-line connections, however, can save money by balancing the two.

Most cell plans come with use-'em-or-lose-'em minutes, so why pay more per month for the unlimited minutes that are part of many of these package deals or per minute on your land line when you're already paying for cell time?

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